

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

STATEMENT OF DECISION

IN THE MATTERS OF THE (1) "IDEAL")
BOROUGH BOUNDARIES OF THE DENALI)
AND NENANA REGIONS, (2) PETITION)
FOR INCORPORATION OF THE DENALI)
BOROUGH, (3) PETITION FOR)
INCORPORATION OF THE VALLEYS)
BOROUGH AND (4) PETITION FOR)
ANNEXATION TO THE MATANUSKA-)
SUSITNA BOROUGH)

SECTION I - BACKGROUND

On June 1, 1989 the Matanuska-Susitna Borough (MSB) lodged a petition to annex approximately 9,844 square miles. The petition sought the annexation under the provisions of AS 29.06.040(b), known as the "legislative review" process.

The area requested for annexation encompassed all of the Denali National Park and Preserve not already within the MSB (approximately 6,476 square miles). The additional estimated 3,368 square miles encompassed the communities of Cantwell, McKinley Park and Healy. The population of the area was estimated at 1,000 residents.

On June 7, 1989, the Commission announced that it would determine "ideal" or "model" boundaries for all of the Unorganized Borough. As a result, the Commission indicated that it would not act on any pending proposal for all borough annexation or incorporation until ideal boundaries were determined for the affected area.

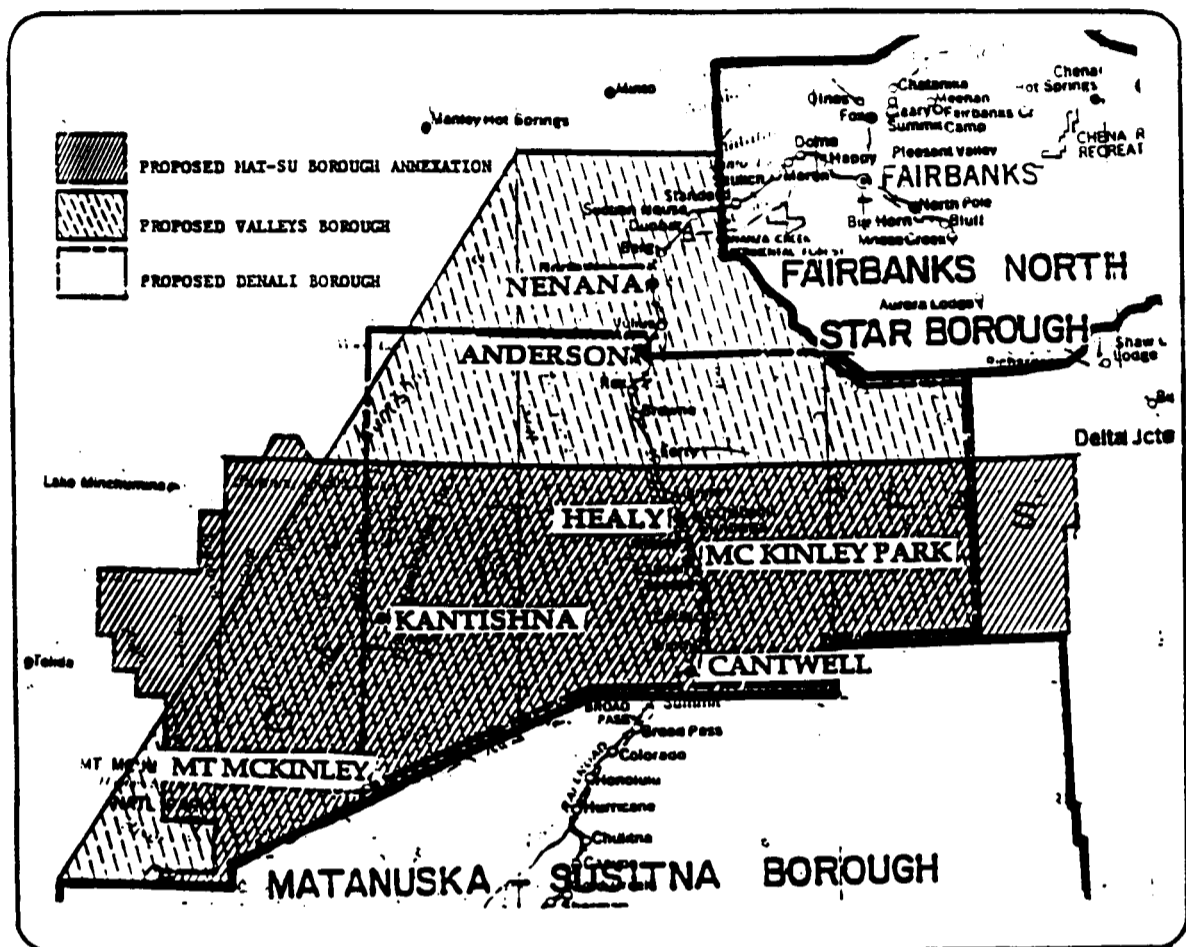
On October 25, 1989, a petition was submitted for the incorporation of the Denali Borough, a home rule borough. The area proposed for incorporation encompassed approximately 9,406 square miles.

The territory proposed for incorporation as the Denali Borough conformed generally to the boundaries of the Railbelt Regional Educational Attendance Area, except that the entire western boundary was extended to include Mt. McKinley. The area encompassed an estimated 2,126 persons, most of whom lived in the communities of Cantwell, McKinley Park, Healy and Anderson. The boundaries of the proposed borough included only a portion of the Denali National Park (approximately 3,679 square miles).

On October 27, 1989, a petition was received for the incorporation of the Valleys Borough, a home rule borough. The area proposed for incorporation encompassed approximately 14,900 square miles. The estimated population of the area was 2,961. Essentially, it included all of the inhabited territory sought by the competing Denali petition plus the road system north past Nenana.

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The boundaries associated with the three petitions are shown on the following map:



The Commission conducted seven public hearings on the merits of the competing petitions. Hearings were conducted as follows:

<u>LOCATION</u>	<u>TIME</u>	<u>DATE</u>
Palmer - MSB Assembly Room	7:00 p.m.	3/22/90
Anderson - School Multipurpose Room	7:00 p.m.	3/22/90
McKinley Park - Community Hall	12:00 noon	3/23/90
Fairbanks - FNSB Assembly Room	7:00 p.m.	3/23/90
Cantwell - Community Center	7:00 p.m.	3/23/90
Healy - Community Center	12:00 noon	3/24/90
Nenana - City Council Chambers	7:00 p.m.	3/24/90

On April 21, 1990, the Commission held a decisional session on the four issues before it. The session was conducted at the Healy Community Center beginning at 1:00 p.m.

During the decisional session, the Commission determined "ideal" boundaries for a borough in the region, amended and approved the petition for incorporation of the Denali Borough, denied the petition for incorporation of the Valleys Borough and denied the petition for annexation by the Matanuska-Susitna Borough. Details concerning these actions and the rationale for the Commission's actions are provided as follows.

SECTION II - FINDINGS AND CONCLUSIONS

Based upon the evidence before the Commission, including but not limited to, the three petitions in question, the testimony given at the seven hearings conducted by the Commission on these matters, the report and recommendations of the Department of Community and Regional Affairs, advice from the Department of Law and written comments from interested parties, the Commission makes the following findings and conclusions.

Conclusion Number One

Notwithstanding the "ideal" boundaries identified in Conclusion Number Five, the Greater Nenana area and the Denali region are not cohesive enough at this time to include both territories within the same organized borough.

In reaching this conclusion, the Commission stressed that "ideal" boundaries are intended to represent long-term goals with respect to regional government boundaries in Alaska. Further, it may be necessary and appropriate to deviate from these ideal boundaries in the short-term.

In this particular case, the exclusion of the Greater Nenana area from the area proposed for incorporation is found to be warranted in the short-term on the basis of broad judgments of political and social policy. The preponderance of testimony in the Denali region was in strong opposition to the inclusion of Nenana at this time. Opposition stemmed from differences in social, cultural and economic considerations. For example, the Denali and Valleys petitions and testimony demonstrated divergent views among the residents of the two areas concerning means of generating local government revenues and philosophies of government operations.

Thus, there appears to be significant potential that the inclusion of the Greater Nenana area in the Denali Borough might result in the defeat of the incorporation proposition by the voters. Therefore, it was determined to be in the best interests of the State of Alaska and the residents of the Denali region for the Greater Nenana area to be excluded from the proposed Denali Borough.

Conclusion Number Two

The proposal for incorporation of the Denali Borough meets the constitutional, statutory and regulatory standards for borough incorporation.

This conclusion is based upon the following findings of the Commission.

- ° The Denali proposal encompasses an area which reasonably satisfies the standard requiring a population which is interrelated and integrated socially, culturally and economically to the maximum degree possible;
- ° the area encompassed by the Denali petition contains a population which is stable and which exceeds the 1,000 threshold;
- ° the area encompassed by the Denali petition contains multiple communities;
- ° the area encompassed by the Denali petition generally encompasses at least one entire REAA;

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- ° at least to the degree exhibited by several existing boroughs, the Denali Borough configuration generally conforms to natural geography, and contains all areas necessary for full development of municipal services;
- ° the regional transportation network afforded by the Parks Highway/Alaska Railroad corridor clearly lends itself to the formation of integrated borough government.
- ° human and financial resources sufficient to provide municipal services are evident. The projected long-term budget (FY 94) of the proposed Denali Borough is shown below:

<u>REVENUE SOURCE</u>	<u>FY 94</u>
Municipal Assistance	\$ 115,311
State Revenue Sharing	60,292
State Educational Aid	2,857,769
Bed Tax 4%	502,485
Severance Tax 5¢/ton	88,558
Utility Tax 2%	80,700
Revenue Total	<u>\$3,705,115</u>

<u>EXPENSES</u>	<u>FY 94</u>
Assembly	\$ 89,265
Mayor's Office	105,600
Education	3,100,200
Unincorp. Aid	50,182
Expenses Total	<u>\$3,345,247</u>

SURPLUS: \$359,868

Conclusion Number Three

The petition for incorporation of the Denali Borough is superior to the petition for incorporation of the Valleys Borough.

This conclusion is based upon the following findings:

- ° Section 6.01 of the proposed Valleys Borough charter appears rigid and unworkable. This provision states that "[A]ny ordinance which purports to tax or levy, appropriate, contract, circumscribe any resident's rights or liberties, or in any way obligate the borough shall be, by operation of this charter referred by the borough Clerk for referendum." Approval of a referendum requires "the affirmative votes of two-thirds of those qualified votes cast on such issue". Such provisions would seem to be impractical and unworkable. To subject each ordinance that purports to obligate the borough or circumscribe any resident's rights or liberties in any way will likely result in chaos and bring the machinery of government to a halt.
- ° Furthermore, it appears that the "automatic referendum" provision of Section 6.01 of the proposed Valleys Borough charter conflicts with constitutional and statutory laws. The automatic referendum provision includes subjects which the law prohibits in charters. AS 29.10.030(c) stipulates that "[A] charter may not permit the . . . referendum to be used for a purpose prohibited by art. XI, sec. 7 of the state constitution." The Constitutional provision

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states, in part, "[T]he referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health or safety."

- ° Concerns over the automatic referendum clause of the proposed Valleys Borough charter are magnified as a result of the separability clause in the charter. Section 15.11 of the charter provides that "[I]f any any provision of this Charter is held invalid by a court . . . the entire Charter shall be void . . .". Thus, if the automatic referendum provision is determined to be invalid, the charter will be void. This, in turn, would raise substantial questions concerning the legal status of the borough (i.e. what is the status of a home rule borough without a charter?).
- ° The Denali proposal shows a more flexible and balanced approach to revenue generation. For instance, it promotes a combination of bed taxes, severance taxes and utility taxes. The Valleys proposal would rely strictly on a bed tax. The Valleys' bed tax, which would be twice that of the Denali bed tax (8% v. 4%), would fall almost exclusively upon the hotel industry in the McKinley Park area. Relying on such a single source of revenue would subject the borough to greater revenue fluctuations as tourist activities in the Denali region rise and fall over the years.
- ° The Denali Borough incorporation petition enjoys support from the prospective major taxpayers in the region (i.e. hotel/coal industries).

Conclusion Number Four

The petition for incorporation of the Denali Borough is superior to the petition for annexation to the Matanuska-Susitna Borough.

This conclusion is based upon the following findings:

Common Interests. The Denali region is a social, cultural and economic independent unit. Ties between the Matanuska-Susitna Borough and the area proposed for annexation are tenuous. Section 3, Article X of Alaska's Constitution provides that: "[E]ach borough shall embrace an area and population with common interests to the maximum degree possible" (emphasis added). The proposed annexation fails to meet that standard.

When examining this standard, it is important to first understand the origins of the Matanuska-Susitna Borough. The creation and boundaries of the Matanuska-Susitna Borough were dictated by the State legislature more than 25 years ago. Rather than using standards for the formation of boroughs, the boundaries were set to conform to the "Palmer-Wasilla-Talkeetna Election District # 7" under the terms of Section 3 of Chapter 52, Session Laws of Alaska, 1963 (the Mandatory Borough Act).

To a degree, the boundaries of election districts were then (and still are) based upon socio-economic considerations. Alaska's Constitution (Art. 6, Sec. 6) provides that "[E]ach new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area." Thus, while

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geographic, social, economic and political factors were considered in setting the boundaries of the election district, it also had to be established in a manner which would ensure equitable representation of the voters of that district in relation to the voters in all other districts in the state.

The wording of the Constitutional provisions concerning election district boundaries and borough boundaries contains significant differences. Borough boundaries are to encompass an "area and population with common interests to the maximum degree possible". Election district boundaries are to contain "as nearly as practicable a relatively integrated socio-economic area" (emphasis added).

Since the Matanuska-Susitna Borough was formed, there have been two modifications of its boundaries. In terms of this issue, the most significant of these changes was the detachment of the community of Cantwell. Cantwell (located at the extreme southern end of the territory currently proposed for annexation) was formally detached from the Matanuska-Susitna Borough in 1971. Unlike the establishment of its initial boundaries, this change was based upon the borough boundary standards established in the Constitution. The change was carried out after a hearing before the Local Boundary Commission and was supported by officials of the Matanuska-Susitna Borough, residents of Cantwell and the Alaska Legislature.

In the 19 years which have passed since Cantwell was detached from the Borough, it appears that the social, cultural and economic differences between the majority of the population of the Matanuska-Susitna Borough and the population of Cantwell (and areas to the north) have increased, rather than diminished. This observation is based upon the following considerations:

- ° The Matanuska-Susitna Borough has experienced phenomenal growth during the past two decades. In 1970, the population of the Borough stood at 6,509; today, its population is estimated at 44,280. This represents an increase of 37,771 residents (580%). By comparison, the population of Cantwell has increased by only 156 residents during the same time.
- ° The vast majority of the growth in the Matanuska-Susitna Borough has occurred in the "urban core" of the Borough. This growth has dramatically altered the social, cultural and economic characteristics of the Borough.
- ° Recently, the Councils of the City of Wasilla and the City of Palmer adopted a joint resolution ("Combined Resolution 89-1") asking the Local Boundary Commission to "fully consider reducing the size of the Matanuska-Susitna Borough to the more densely populated or "core" area of the Borough and including the remainder of the Borough area into the proposed Denali Borough and the Glennallen/Copper Center Borough areas".

Ability to Serve the Area. In the case of competing petitions, the Commission's regulations (19 AAC 10.835) require that preference be given to the entity which would be best able to serve the area. It seems evident that the proposed Denali Borough would be able to serve the area better than the Matanuska-Susitna Borough. This conclusion is based upon the following considerations:

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- ° The proposed Denali Borough and the proposed Valleys Borough would be much closer to the residents of the area. Closer proximity would presumably provide for greater citizen participation in the government and better service from the government. If Healy were annexed to the Matanuska-Susitna Borough, residents of that community would have to travel an estimated 440 miles (round trip) to conduct business at the Borough seat or School District headquarters. By comparison, with Healy as the seat for a Denali or Valleys Borough, residents of Nenana (at the extreme northern end of the proposed Valleys Borough) would have to travel one-quarter of that distance while residents of Cantwell (at the extreme southern end) would have to travel only about 75 miles round trip.
- ° The Matanuska-Susitna Borough claims that it will be better able to serve the residents of the region because it is an established government. This argument is unconvincing since State law allocates both time and financial resources to permit a newly formed borough to achieve operating capability.
- ° The Matanuska-Susitna Borough also claims that it will be better able to serve the residents of the region because it enjoys relatively greater economies of scale. Given its larger population, it is possible to argue that the Matanuska-Susitna Borough could provide certain services at less cost per resident than the Denali Borough. However, the same argument could be used to promote the annexation of the Matanuska-Susitna Borough to the Municipality of Anchorage. Further, such concerns are not necessarily a consideration of a municipality's ability to "better serve the territory". Residents of the Denali region do not seek many of the areawide and non-areawide services offered by the Matanuska-Susitna Borough.

Financial Significance. In the case of competing petitions, the Commission's regulations give preference to the entity which would be most financially dependent on the resources contained within the area.

The annexation would have little impact on the financial viability of the Matanuska-Susitna Borough. The Borough's petition estimates annual bed tax revenues in the area at \$370,000. Areawide and non-areawide property taxes (based upon current levies and values estimated in the petition) would generate an estimated \$620,215. Other revenues (State education aid, State Revenue Sharing, etc.) were estimated by the Borough in a 5/3/89 memorandum at \$1,470,000. These figures total \$2,460,215. The Borough estimated its expenses at \$2,400,000. Thus, revenues in the area are projected to exceed expenses by only \$60,215 (less than 3%).

By comparison, the annexation of the Healy and McKinley Park areas to the Matanuska-Susitna Borough would greatly diminish the viability of a borough encompassing Anderson (and, over the long-term, the Nenana area). It is estimated that more than 90% of the projected locally generated revenue for the proposed Denali Borough would be raised as a consequence of economic activity in the Healy and McKinley Park portions of the prospective borough. If these areas were annexed to the Matanuska-Susitna Borough, the prospects of incorporating a borough to the north would be greatly diminished.

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Conclusion Number Five

The "ideal" boundaries for a borough in the region include the area from the northern boundary of the Matanuska-Susitna Borough to the western boundary of the Fairbanks North Star Borough. This area includes the communities of Cantwell, McKinley Village, Healy, Anderson and Nenana.

This conclusion is based upon the findings of the Commission that:

Residents of Nenana share social, cultural, economic and other interests with a number of regions, including those encompassed by the Yukon Koyukuk Regional Educational Attendance Area (REAA), the Fairbanks North Star Borough and the Railbelt REAA. However, based upon the following considerations, these ties appear to be strongest with the Railbelt REAA:

- ° Nenana's proximity to the various regions. It is approximately 20 road miles from Nenana to Anderson, the nearest Railbelt REAA community. By comparison, it is 53 road miles from Fairbanks. Nenana is 183 road miles from Minto and 215 road miles (96 river miles) from Manley Hot Springs, the nearest Yukon-Koyukuk REAA communities.
- ° The transportation links between Nenana and the Railbelt (i.e. the Parks Highway and the Alaska Railroad) appear to be the major transportation facilities serving the community. Of course, barge companies also operate from Nenana to serve the communities along the Tanana and Yukon Rivers. While important, the river links seem less significant than the highway and rail links. For example, Nenana's Yutana Barge line passes the community of Manley Hot Springs on every trip during its operating season, but stops in the community only about 6 times a year.
- ° Nenana shares economic interests with other Railbelt communities on such issues as management of resources associated with interior Alaska mining, tourism and agriculture. Further, the Toghotthele Corporation (Nenana's ANCSA Village Corporation) owns significant surface property rights in the area east of Anderson (within the boundaries of the proposed Denali borough) as well as the area surrounding Nenana.
- ° The petition to include Nenana within the same borough as the Railbelt REAA communities appears to have strong support from the voters of Nenana. The petition was signed by 25% of the number of voters in Nenana who voted in the last State general election. That number is two-thirds higher than the minimum required by law.
- ° Officials of the City of Nenana initiated a study of borough feasibility in an area encompassing the Railbelt REAA and the community of Nenana. Further, the Mayor of the City of Nenana wrote to the Commission on March 19, 1990 stating that "it was the consensus of the Nenana Municipal Assembly that the Denali Borough, as amended (i.e. including the City of Nenana) is the preferred choice for a borough if the City of Nenana must be included in a borough."

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- While the petition for incorporation of the Denali borough made no provision for the inclusion of Nenana, the petitioners acknowledged the potential for its inclusion by the Local Boundary Commission. The rationale offered in the Denali incorporation petition for exclusion of the area does not appear to warrant exclusion of Nenana from the "ideal" boundaries of a borough in the region.

SECTION III - ORDER

Based upon the findings and conclusions set out in Section II, the Commission orders as follows:

1. That the "ideal" boundaries for a borough in the Denali and Greater Nenana regions are defined as set out in the following description:

Beginning at the intersection of 147° 00' 00" West Longitude and the northern boundary of the Matanuska-Susitna Borough (as described in the "Certificate of Boundaries - Matanuska-Susitna Borough" issued by the Local Affairs Agency, State of Alaska on June 30, 1971 and recorded in the Palmer Recording District on July 7, 1971);

thence, southwesterly, along said northern boundary of the Matanuska-Susitna Borough to its northwesternmost corner at approximately 153° 00' West Longitude and 62° 44' North Latitude;

thence, northeasterly along the following described line to its intersection with the western boundary of the Denali National Park and Preserve (as established under Section 202(3)(a) of Public Law 96-487, approved by Congress on December 2, 1980) at approximately 152° 24' West Longitude and 63° 11' North Latitude; said line beginning at the northwesternmost corner of the Matanuska-Susitna Borough and extending to the baseline of the Fairbanks Meridian at 150° 00' 00" West Longitude (hereinafter "Matanuska-Susitna Borough/Fairbanks Meridian line");

thence, northeasterly along said western boundary of the Denali National Park and Preserve to its intersection with the Matanuska-Susitna Borough/Fairbanks Meridian line at approximately 151° 17' West Longitude and 64° 00' 00" North Latitude;

thence, northeasterly along the Matanuska-Susitna Borough/Fairbanks Meridian line to its end point at the intersection of 150° 00' 00" West Longitude and the base line of the Fairbanks Meridian;

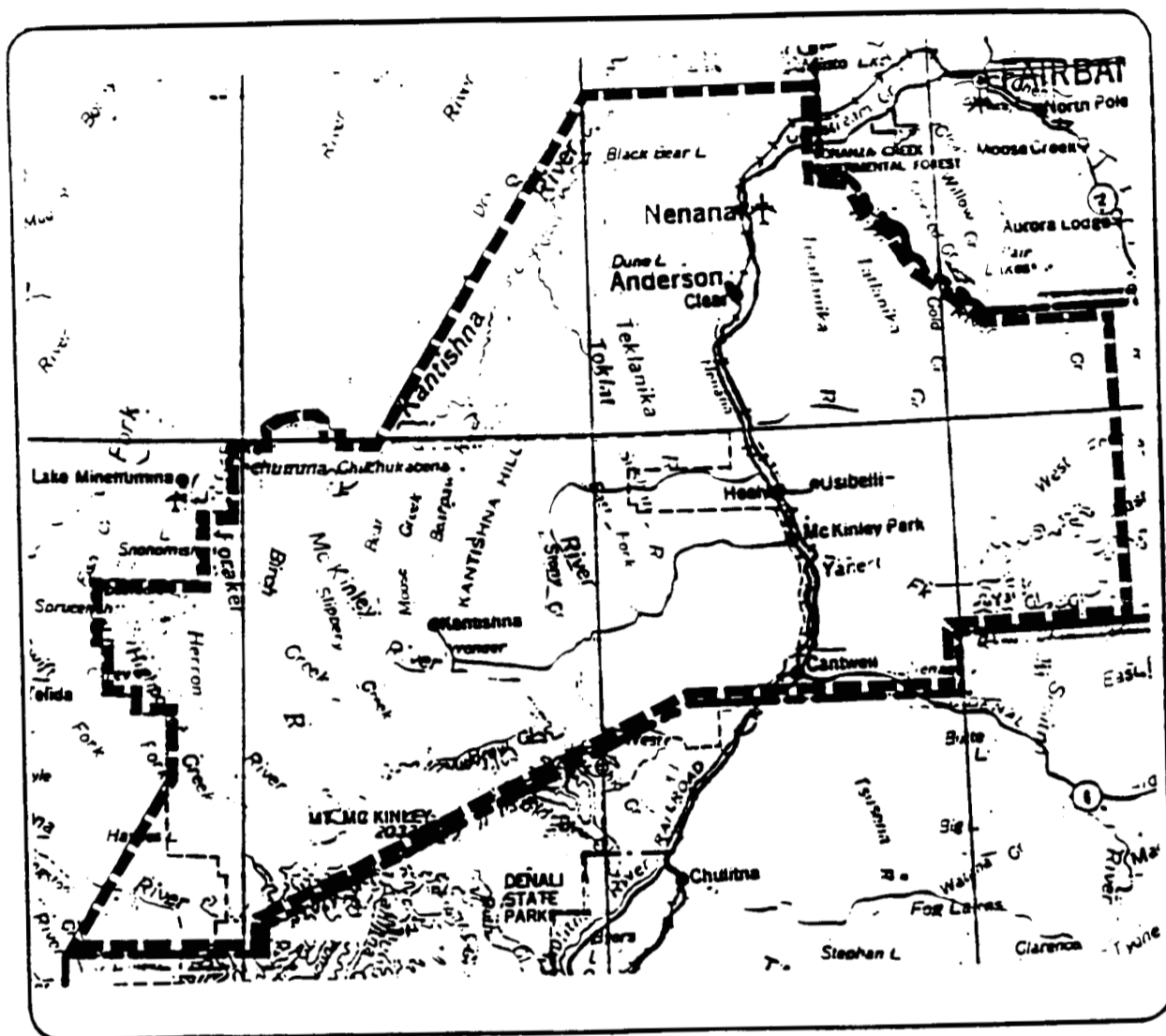
thence, east along the baseline of the Fairbanks Meridian to its intersection with the western boundary of the Fairbanks North Star Borough (as described in the "Certificate - Boundaries of the Fairbanks North Star Borough" issued by the Department of Community and Regional Affairs, State of Alaska on April 20, 1983);

thence southeasterly along said boundaries of the Fairbanks North Star Borough to its intersection with 147° 00' 00" West Longitude;

thence, south along 147° 00' 00" West Longitude to its intersection with said boundaries of the Matanuska-Susitna Borough, the point of beginning, all in the State of Alaska, containing 14,796 square miles, more or less.

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A map of this area is provided below:



2. That the boundaries of the proposed Denali Borough are amended to conform to the following description:

Beginning at the intersection of 147° 00' 00" West Longitude and the northern boundary of the Matanuska-Susitna Borough (as described in the "Certificate of Boundaries - Matanuska-Susitna Borough" issued by the Local Affairs Agency, State of Alaska on June 30, 1971 and recorded in the Palmer Recording District on July 7, 1971);

thence, southwesterly, along said northern boundary of the Matanuska-Susitna Borough to its northwesternmost corner at approximately 153° 00' West Longitude and 62° 44' North Latitude;

thence, northeasterly along the following described line to its intersection with the western boundary of the Denali National Park and Preserve (as established under Section 202(3)(a) of Public Law 96-487, approved by Congress on December 2, 1980) at approximately 152° 24' West Longitude and 63° 11' North Latitude; said line beginning at the northwesternmost corner of the Matanuska-Susitna Borough and extending to the baseline of the Fairbanks Meridian at 150° 00' 00" West Longitude (hereinafter "Matanuska-Susitna Borough/Fairbanks Meridian line");

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thence, northeasterly along said western boundary of the Denali National Park and Preserve to its intersection with the Matanuska-Susitna Borough/Fairbanks Meridian line at approximately 151° 17' West Longitude and 64° 00' 00" North Latitude;

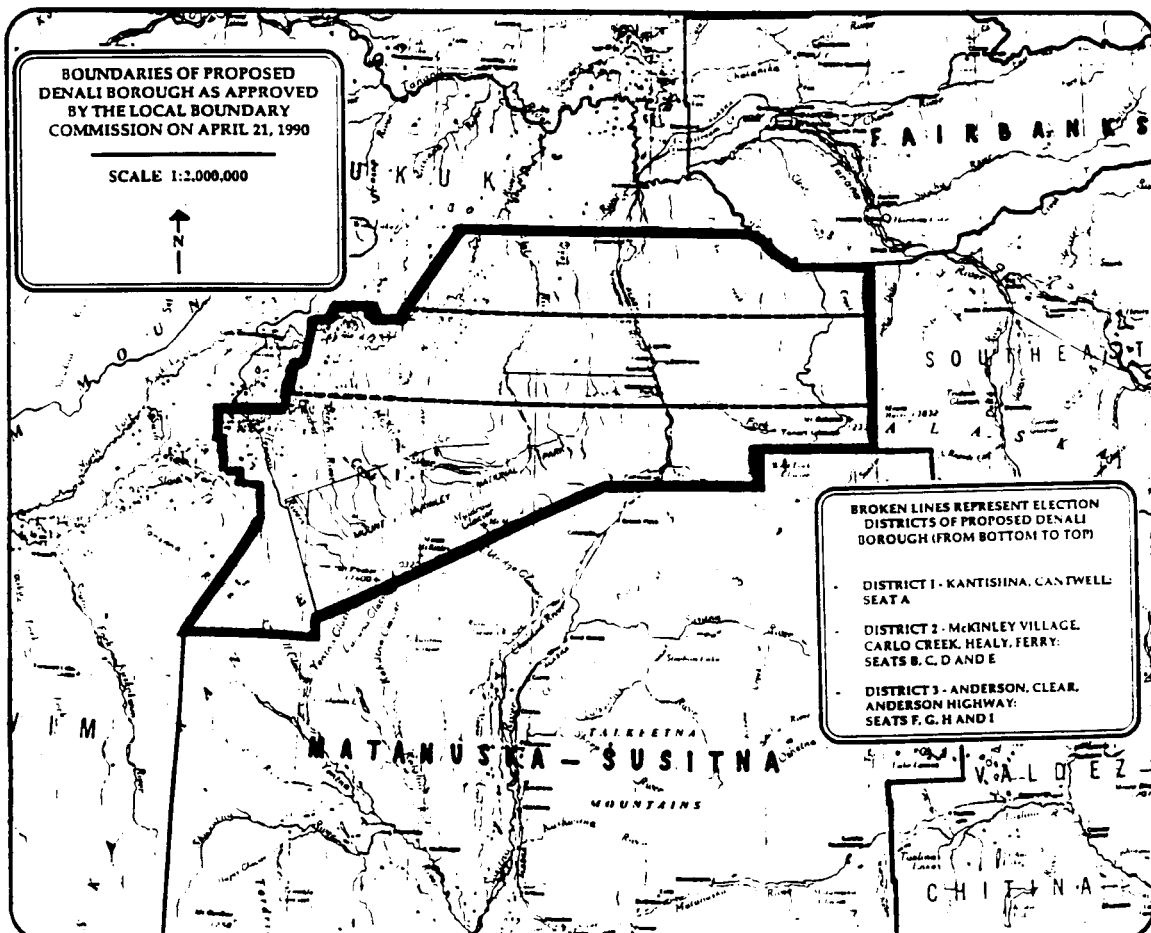
thence, northeasterly along the Matanuska-Susitna Borough/Fairbanks Meridian line to its intersection with 64° 28' 00" North Latitude;

thence, east along 64° 28' 00" North Latitude to its intersection with the western boundary of the Fairbanks North Star Borough (as described in the "Certificate - Boundaries of the Fairbanks North Star Borough" issued by the Department of Community and Regional Affairs, State of Alaska on April 20, 1983);

thence southeasterly along said boundaries of the Fairbanks North Star Borough to its intersection with 147° 00' 00" West Longitude;

thence, south along 147° 00' 00" West Longitude to its intersection with said boundaries of the Matanuska-Susitna Borough, the point of beginning, all in the State of Alaska, containing 12,861 square miles, more or less.

A map of this area is provided below:



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3. That the boundaries of the election districts of the proposed Denali Borough are amended to conform to the following description:

District 1: that portion of the proposed borough lying south of 63° 40' 48" North Latitude, including the communities of Kantishna and Cantwell.

District 2: that portion of the proposed borough lying north of 63° 40' 48" North Latitude and south of 64° 01' 22" North Latitude, including the communities of McKinley Village, Carlo Creek, Healy and Ferry.

District 3: that portion of the proposed borough lying north of 64° 01' 22" North Latitude, including the communities of Anderson and Clear, as well as the Anderson Highway area.

4. That propositions relating to the following matters be placed before the qualified voters of the area proposed for incorporation at an election to be conducted in accordance with AS 29.05.110 - AS 29.05.120.

- A. Incorporation of the proposed Denali Borough.
- B. Approval of a 4% tax on the rental of overnight accommodations. In order to ensure the financial viability of the proposed borough, voter approval of this tax proposition is required as a condition for incorporation.
- C. Approval of a 2% utility sales tax (voter approval is not required as a condition for incorporation).
- D. Approval of a severance tax amounting to 5¢/ton on coal and an equivalent amount on other resources (voter approval is not required as a condition for incorporation).
- E. Exemption of elected officials from the Campaign Disclosure provision as permitted by AS 15.13.
- F. Election of a mayor to a three year term. Candidates for office of the mayor must have resided within the borough proposed for incorporation for at least three years at the time of the election. The mayor will be elected by the voters areawide.
- G. Election of nine assembly members by districts. Candidates must have resided within the borough proposed for incorporation for at least one year at the time of the election. Further, candidates must reside in the district from which they seek office at the time of the election. Only voters of the district may vote for candidates for that district.

There are three separate districts. District 1 includes only 1 seat (Seat A). District 2 includes 4 seats (Seats B, C, D and E) and District 3 includes 4 seats (Seats F, G, H and I). For the initial election, Seats B, F and G will be one year terms; Seats C, D and H will be two year terms and A, E and I will be three year terms.

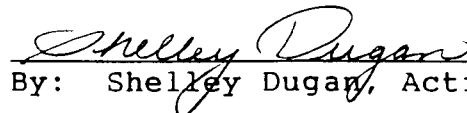
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5. That the petition for incorporation of the Valleys Borough be denied.

6. That the petition for annexation to the Matanuska-Susitna Borough be denied.

APPROVED IN WRITING THIS 11th day of May, 1990.

LOCAL BOUNDARY COMMISSION:


By: Shelley Dugan, Acting Chairman

Attest:


Dan Bockhorst, Staff

RECONSIDERATION AND JUDICIAL APPEAL

Any individual may request that the Commission reconsider the decision outlined above within twenty days of the date of this order under 19 AAC 10.870. A copy of the regulations governing reconsideration is available from the Commission's staff at the Department of Community and Regional Affairs, 949 East 36th Avenue, Anchorage, Alaska 99508 (telephone 561-8586 - fax 563-1473).

A judicial appeal of this decision may also be made under the provisions of Alaska Rules of Appellate Procedures 601 et seq. An appeal to superior court must be made within thirty days from the date this order is mailed or delivered.

FUTURE CONSIDERATION OF INCLUSION OF GREATER NENANA AREA

On May 11, 1990, the Commission again expressed the desire to explore, at some future date, the merits of including the Greater Nenana Area in the Denali Borough. In this respect, the Commission asked the Department to prepare a report and recommendation to the Commission on the matter within 30 months of the date of incorporation of the Denali Borough.

